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SUPREME COURT, U.S.

No. 06-1620

IN THE

Supreme Court of the United States

STEPHEN MARTIN AND SUSAN MARTIN,

Petitioners,

v.

SANDERSON FARMS, INC.; JAMES STUDENSKY, CHAPTER 7 TRUSTEE; AND FARMERS STATE BANK,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT SANDERSON FARMS, INC.

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STATEMENT PURSUANT TO RULE 29.6

Respondent, Sanderson Farms, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

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STATEMENT OF THE CASE

Petitioners Susan and Stephen Martin are chapter 7 debtors. In February 1998, more than five years before their bankruptcy filing, Susan Martin entered into a Hatching Egg Producer's Agreement with Sanderson Farms, Inc. (Production Division) ("Production Division") – a wholly-owned subsidiary of respondent Sanderson Farms, Inc. As a hatching egg producer, Mrs. Martin agreed that she would accept and care for flocks of hens and roosters that Production Division delivered to her farm site, that Production Division would collect the eggs laid by the flock, and that the eggs as well as the birds were the property of Production Division. In exchange, Production Division agreed to compensate Mrs. Martin. The Hatching Egg Producer's Agreement contained an arbitration clause requiring that any dispute arising out of or relating to the contract be resolved by binding arbitration.

Both Mr. and Mrs. Martin borrowed money from respondent Farmers State Bank (the "Bank") to construct the barns necessary for the hatching egg business and to purchase the necessary equipment.

A year before they commenced their chapter 7 bankruptcy case, the Martins filed a state court lawsuit against Sanderson Farms and the Bank alleging, among other things, that Sanderson Farms had defrauded them and engaged in a conspiracy with the Bank. The state court granted Production Division's motion to enforce the arbitration clause and abated the case. The Martins did not appeal that decision. They commenced but did not continue an arbitration proceeding as to Sanderson Farms and the Bank, and then voluntarily nonsuited the state court action.

Several months later, in July 2003, the Martins commenced their voluntary chapter 7 bankruptcy case; they received their discharge in October 2003. Their verified bankruptcy schedules listed their claims against Sanderson Farms and the Bank as assets of the bankruptcy estate with "zero" value, later amended to claim an "unknown" value.

The Martins did not identify their claims against Sanderson Farms and the Bank as exempt property, and the claims became and remained property of the bankruptcy estate.

Respondent James Studensky, the chapter 7 trustee ("Trustee"), entered into a settlement with the Bank and sought bankruptcy court approval of his compromise. Pro se, the Martins objected and filed several motions, including a motion to have Sanderson Farms fined millions of dollars, its assets frozen, and its executives imprisoned for alleged violations of the automatic stay relating to the removal of Sanderson Farms' flock, whose care Mrs. Martin had relinquished to Production Division.[1] The Martins also sought similar punitive relief against the Bank as well as vacation of an order authorizing the Bank's foreclosure of the farm site, despite the Martins' express intentions in their bankruptcy statement to surrender that property to the Bank. Appendix C, p. 18a.[2] In November 2004, following a hearing, the bankruptcy court denied these requests and granted the Trustee's motion to compromise with the Bank. The Martins appealed those decisions.

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[1] The Martins' changes of strategy coincide with the withdrawal of their bankruptcy counsel and their self-representation.

[2] References to the Appendix are to the Appendix made a part of the Martins' petition for writ of certiorari.

While the Martins' appeal was pending before the district court, Trustee and Sanderson Farms entered into a settlement agreement to compromise the estate's alleged claims against Sanderson Farms. The bankruptcy court entered "an interim order" establishing procedures by which any party in interest (including the Martins) could submit bids higher than the amount Sanderson Farms had offered to pay in settlement. Appendix H. The Martins filed a notice of appeal of this interlocutory order, attempting to "supplement" their pending appeal to add a new issue concerning the Sanderson Farms compromise. The district court dismissed this appeal from the interlocutory interim order. Appendix G. The Martins appealed that dismissal to the court of appeals.

While their appeal was before the district court, the Martins requested that the district court withdraw the reference of their bankruptcy case in an effort to obtain a more favorable forum. The district court denied that request, finding "no legal basis" for it. Appendix F. The district court also affirmed the bankruptcy court's decisions, Appendix B, and the Martins "supplemented" their appeal in the Fifth Circuit to add the district court's new rulings. Through "supplemental designations" and through their brief, the Martins attempted to place before the court of appeals numerous issues never raised in the bankruptcy court or properly designated pursuant to Federal Rule of Bankruptcy Procedure 8006.

Meanwhile, the bankruptcy court heard the Trustee's compromise of controversy with Sanderson Farms and approved it in May 2005. Sanderson Farms filed a timely motion to correct a factual error, which the bankruptcy court granted on July 12, 2007. The Martins did not perfect an appeal of that order but have complained of it in their

"Supplement in Support of Petition for Writ of Certiorari" filed with this Court.

While their case was pending in the court of appeals, the Martins filed notices of constitutional issues pursuant to Federal Rule of Appellate Procedure 44, generally stating that constitutional issues relating to the Federal Arbitration Act and the Texas Arbitration Act were part of their appeal and should be brought to the attention of the Texas Attorney General and the United States Attorney General. The clerk of the court of appeals provided notification to the appropriate Attorneys General that the Martins had raised such issues. Neither Attorney General intervened in the appeal.

The court of appeals rendered its decision in February 2007. It affirmed the district court's judgment upholding the November 2004 bankruptcy court orders and dismissed the Martins' appeal of the interim order. The court of appeals declined to address issues raised in the Martins' brief but not presented to the bankruptcy and district courts and dismissed all such claims.

In May 2007, the Martins filed their petition for writ of certiorari.

In accordance with Supreme Court Rule 15, Sanderson Farms disputes the Martins' Statement of Facts as erroneous in these respects:

- The "1999 labor Agreement" referenced was not between Mrs. Martin and Sanderson Farms, Inc., but between Mrs. Martin and Production Division (petition p. 12).

- There was no 1998 pre-construction investment contract among the Martins, Sanderson Farms, and the Bank (petition p. 12).

- Sanderson Farms did not prematurely remove the annual chicken flock from the Martins' farm; rather, Trustee authorized the removal and its timing (petition p. 13).

- The bankruptcy court did not "open up" the state court's nonsuit and add the Bank and Stephen Martin as parties to the arbitration order (petition pp. 13-14). The Martins nonsuited the state court case 20 months before the bankruptcy court entered its orders. Appendix E.

- On appeal from the bankruptcy court's orders, the Martins did not challenge the bankruptcy court's "authority" to approve the compromise (petition p. 14). While the Martins did argue on appeal that the bankruptcy court could not approve a compromise of a "potential cause of action," they did not challenge the bankruptcy court's authority or jurisdiction to approve a compromise.

- The causes of action listed in the Martins' schedules were not "non-estate property" (petition p. 14). Upon the Martins' bankruptcy filing, their causes of action became property of their bankruptcy estate. The Martins scheduled those claims as assets of their bankruptcy estate with an "unknown" value, and they did not exempt them. Further, the bankruptcy court approved the compromise on the basis that the claims were property of the estate that

the Trustee had the right to compromise. Appendix C. The Martins did not challenge on appeal the issue of whether causes of action are property of the estate.

- The Trustee's compromise of controversy with Sanderson Farms was not a "duplicate" compromise (petition p. 15).

- The Martins' appeal of the interim order did not challenge the bankruptcy court's "authority/ jurisdiction" to enter the order (petition p. 15).

REASONS FOR DENYING THE PETITION

I. The Martins Do Not Own the Causes of Action on Which They Base Their Petition

The gravamen of the Martins' petition is that they want their lawsuit back. To accomplish that, they claim that they were unconstitutionally denied the right to have their disputes resolved by a court fully empowered with Article III authority and were improperly relegated to having their disputes resolved (i) first by a non-Article III state court judge, (ii) then by an arbitrator lacking Article III powers, and (iii) then by an Article I bankruptcy court. To bolster their argument, the Martins claim that these courts or arbitrators improperly denied them a jury trial and that the U.S. district court did as well through its refusal to withdraw the reference of their chapter 7 bankruptcy case.

The Martins' arguments fail for several reasons.

First and foremost, the Martins' arguments are based on the fundamentally flawed premise that the Martins own the causes of action on which they base their arguments. Their claims about denial of a jury trial, arbitration, and bankruptcy jurisdiction arise out of the Martins' prepetition dealings with Production Division, Sanderson Farms, and the Bank. All of these claims became property of the Martins' bankruptcy estate when they filed their chapter 7 petition on July 14, 2003.[3] All courts below – the bankruptcy court, the district court, and the court of appeals – have based their decisions on the irrefutable fact that the Martins lost ownership of the claims upon the filing of their bankruptcy case and that the claims belong to the Trustee.

The Martins have no standing to complain now about the resolution of their state court proceeding, the order to arbitrate, the settlement of their claims, and the denial of a jury trial. Upon their bankruptcy filing, the Martins' claims became property of their bankruptcy estate, and the Trustee, vested with ownership rights, exercised his right to settle with Sanderson Farms and with the Bank. By filing bankruptcy, the Martins made a decision to exchange their non-exempt assets for a full and complete discharge of their liabilities. Having received their discharge, they may not now get back their assets.

The bankruptcy court approved a settlement of all of the Martins' prepetition claims against the Bank in November 2004. The bankruptcy court approved the Trustee's settlement with Sanderson Farms and Production Division in May 2005,

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[3] 11 U.S.C. § 541(a); *Yaquinto v. Segerstrom (In re Segerstrom)*, 247 F.3d 218, 223-224 (5th Cir. 2001) (citing *Louisiana World Exposition v. Federal Ins. Co.*, 858 F.2d 233, 245 (5th Cir.1988)).

and a final order approving that compromise was entered on July 12, 2007.

Accordingly, the Martins have no standing to challenge (i) the constitutionality of the Texas Constitution, the Federal Arbitration Act and the Texas Arbitration Act, (ii) their alleged right to a jury trial, or (iii) the jurisdiction of the bankruptcy court to adjudicate controversies regarding property of the estate. The claims were the Trustee's claims to resolve, not the Martins'.

II. The Martins Improperly Attempt to Raise Constitutional Issues Not Presented to or Preserved in the Lower Courts

The Martins' challenges to the constitutionally of the Federal Arbitration Act, the Texas General Arbitration Act, Article V of the Texas Constitution, and the Bankruptcy Amendments and Federal Judgeship Act of 1984 ("BAFJA") were not raised in the bankruptcy or district courts. This Court does not decide issues in the first instance absent exceptional circumstances.[4] This case does not present exceptional circumstances, so the Martins' petition should be denied.

Moreover, the Martins failed to identify and preserve these issues through proper designation under Federal Rule of Bankruptcy Procedure 8006. Issues not properly identified

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[4] *Gonzalez v. Duenas-Alvarez*, __ U.S. ___, 127 S.Ct. 815, 823 (2007); *National Collegiate Athletic Ass'n v. Smith*, 525 U.S. 459, 469-470 (1999); *Roberts v. Galen of Va., Inc.*, 525 U.S. 249, 253-254 (1999) *(per curiam)*; *United States v. Bestfoods*, 524 U.S. 51, 72-73 (1998).

in accordance with Bankruptcy Rule 8006 are deemed waived.[5]

The Martins' complaints about denial of their right to a jury trial in the state court case should have been raised in their state court action, which they voluntarily dismissed before their bankruptcy filing. The Martins' entitlement to a jury trial was never presented to or decided by the bankruptcy court; accordingly, the foundation for this Court's review of a lower court's decision does not exist.

Neither was any issue regarding Texas Constitution Article V presented to the bankruptcy court or district court or preserved in any Rule 8006 designation of issues. This issue made its first appearance in the Martins' brief in the court of appeals.

The same is true as to the Martins' challenges to Title 28, sections 151, 157, and 1334. The Martins never challenged the constitutionality of these sections in the courts below.

Having failed to present these issues previously, the Martins may not now seek relief from this Court on new theories.

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[5] *Zimmermann v. Jenkins (In re GGM, P.C.)*, 165 F.3d 1026 (5th Cir. 1999).

III. The Federal Arbitration Act, the Texas General Arbitration Act, and Article V of the Texas Constitution are Not Unconstitutional Because Congress did not Confer Article III Powers on Private Arbitrators and State Judges

The Martins' new theory for recovering ownership of their lawsuit is to claim that they were denied the right to have their disputes resolved by an Article III court.

As stated above, this theory fails because the Martins do not own the claims.

Second, an agreement to arbitrate is a voluntary decision to present disputes to a non-judicial process in lieu of the judicial process, including a jury trial. The Martins were not forced to arbitrate under either the Federal Arbitration Act or the Texas General Arbitration Act. Mrs. Martin contractually agreed to arbitrate disputes relating to the Hatching Egg Producer's Agreement,[6] and the Martins jointly commenced an arbitration proceeding against Sanderson Farms and the Bank but later abandoned it. They then voluntarily dismissed their Texas state court action and chose to file bankruptcy. The choice not to present their disputes to a jury was theirs, and the loss of ownership of their claims through the bankruptcy filing was their voluntary choice as well.

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[6] The Martins seek to avoid the arbitration clause contained within the Hatching Egg Producer's Agreement by claiming that they and Sanderson Farms were parties to a 1998 "contract" that contained no arbitration clause. The Martins have never produced any contract supporting this claim, and their own bankruptcy schedules affirm that the 1999 Hatching Egg Producer's Agreement is the contract between Mrs. Martin and Production Division. The Martins' schedules reflect no contract between them and Sanderson Farms.

The Martins erroneously rely on this Court's *Marathon*[7] decision as a basis for claiming that non-judicial arbitrators are unconstitutional delegates of the Article III federal courts, just as this Court concluded that Congress had delegated too much jurisdiction to Article I bankruptcy judges under the previous Bankruptcy Act. The Martins' argument fails from the start because non-judicial arbitrators receive their adjudicative powers contractually, not from Congress or the Article III federal courts.[8] The United States Constitution, Article III, does not "confer" powers on private arbitrators.

Nor does Article III of the U.S. Constitution require that state judges have the same judicial "security" of life-time appointment and salary protection as do federal judges. That article addresses the "judicial power of the United States," not of the individual states. The U.S. Constitution reserved for the states or to the people those powers not delegated to the United States.[9]

IV. Title 28's Provisions Conferring Power on the Bankruptcy Courts are Constitutional

Contrary to the Martins' argument, Congress properly responded to this Court's *Marathon* holding by enacting BAFJA, and, specifically, 28 U.S.C. §§ 151, 157 and 1334.

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[7] *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982).

[8] *See* 9 U.S.C. §§ 2, 4 (Westlaw 2007); TEX. CIV. PRAC. & REM. CODE § 171.0001 (Westlaw 2007).

[9] United States Const., amend. X.

Numerous courts have upheld the constitutionality of those jurisdictional grants of authority to the bankruptcy courts.[10]

In arguing that they were deprived of constitutional rights because the ownership of their claims and the settlement of those claims were heard by a bankruptcy judge empowered under Article I, the Martins confuse the difference between a bankruptcy court's plenary jurisdiction to adjudicate "core proceedings," such as compromises of controversies, with "related to proceedings." The bankruptcy court undoubtedly had jurisdiction under 28 U.S.C. § 157 to adjudicate the Trustee's motion to compromise controversy with Sanderson Farms and the Martins' various motions against Sanderson Farms concerning alleged violations of the automatic stay. These matters "arise under" the Bankruptcy Code since they directly involve Bankruptcy Rule 9019 (compromises of controversy) and Bankruptcy Code section 362 (automatic stay). As core proceedings, these matters fell squarely within the power of the bankruptcy court to adjudicate and to render final judgments.

Also fundamentally flawed is the Martins' argument that Congress unconstitutionally delegated power to the bankruptcy court that enabled the court to deprive them of their prepetition claims against Sanderson Farms. The Martins' loss of ownership of their putative claims is a

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[10] *In re Rheuban*, 128 B.R. 551, 563 (Bankr. C.D. Cal. 1991) (and numerous cases cited therein); *Earle Indus., Inc. v. Bond Gen'l Contracting, Inc. (In re Earle Indus., Inc.)*, 71 B.R. 919, 925 (Bankr. E.D. Pa. 1987); *Storage Equities, Inc. v. Delisle*, 91 B.R. 616, 618 (D. Ga. 1988); *Nordberg v. Republic Nat'l Bank of Miami (In re Chase & Sanborn Corp.)*, 51 B.R. 733, 734 (Bankr. S.D. Fla. 1985); *Production Steel, Inc. v. Bethlehem Steel Corp. (In re Production Steel, Inc.)*, 48 B.R. 841 (M.D.Tenn.1985).

function of Bankruptcy Code section 541, which defines property of the estate, not the bankruptcy court's adjudication of the Trustee's motions to compromise controversy.

The bankruptcy court properly exercised its jurisdictional powers to approve settlements between the Trustee, as owner of the estate's claims, and Sanderson Farms. Nothing in that exercise violated Article III of the U.S. Constitution.

V. The District Court Properly Refused to Withdraw the Reference of the Martins' Bankruptcy Case

While their appeal of the November 2004 bankruptcy court orders was pending in the district court, the Martins requested that the district court withdraw the reference of their chapter 7 bankruptcy case. The district court properly denied the Martins' motion as without legal basis. Appendix F. In their motion, the Martins requested that the district court withdraw the reference of their entire bankruptcy case because Sanderson Farms had filed a motion for sanctions against the Martins.

The Martins were forum-shopping, and their request for withdrawal of their entire bankruptcy case to the district court was unsupported in fact and law. Withdrawal of the reference of an entire bankruptcy case is "extremely rare."[11] The Martins showed no good cause for removal of the chapter 7 case from the bankruptcy court, and they mistakenly relied on section 157(d)'s provisions for removal of an adversary proceeding, rather than a chapter 7 case, to justify removal.

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[11] W.L. Norton, Jr., 1 NORTON BANKRUPTCY L. & PRAC. 2d § 8.1 (2004).

The Martins state that the reason for their motion to withdraw the reference was "to finally be able to exercise the jury right in an Article III court" (petition, p. 26). Although their motion to withdraw the reference does not support that characterization, even if it did, the district court's decision to deny withdrawal of the reference was appropriate. The Martins attempt to draw a connection between withdrawal of the reference of their chapter 7 bankruptcy case and their entitlement to a jury trial on any claims against Sanderson Farms. None exists. Placement of the chapter 7 case in the U.S. district court would not alter the underlying impediments to the Martins' prosecution of claims against Sanderson Farms: they no longer owned the claims, and a valid arbitration provision required that Mrs. Martin arbitrate any disputes arising out of the Hatching Egg Producer's Agreement.

A district court can grant a motion to withdraw the reference "for cause shown."[12] The district court found "no legal basis" to withdraw the reference, and the Martins still have shown none that would justify this Court's granting their petition for writ of certiorari.

Additionally, the Fifth Circuit properly made no specific comment about the Martins' complaints that the district court erred in denying their motion because the Martins abandoned that argument by failing to cite any authority in support of their appeal point.[13] The district court's denial of the motion to withdraw the reference of the bankruptcy case was also an interlocutory decision not ripe for appeal.[14]

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[12] 28 U.S.C. § 157 (Westlaw 2007).

[13] *United States. v. Cyprian*, 197 F.3d 736, 741 (5th Cir. 1999).

[14] *Caldwell-Baker Co. v. Parson*, 392 F.3d 886, 888 (7th Cir. 2004); *In re Pruitt*, 910 F.2d 1160, 1166 (3d Cir. 1990) (citing numerous cases holding that such decisions are interlocutory and non-appealable).

VI. The Martins Improperly Seek Appellate Remedies From This Court Rather than From the District Court.

In their supplement, the Martins complain about the bankruptcy court's decision to proceed with the administration of their bankruptcy case – specifically, the hearing on Sanderson Farms' motion to correct the previous order approving the compromise between it and the Trustee. The bankruptcy court refused to hear Sanderson Farms' motion while the Martins' appeal was pending in the court of appeals. Upon entry of the court of appeals' mandate, the bankruptcy court scheduled Sanderson Farms' motion for hearing, which was conducted on July 11, 2007.

The bankruptcy court properly exercised jurisdiction to hear Sanderson Farms' motion following the court of appeals' decision. The court of appeals clearly held that jurisdiction over the Trustee's compromise with Sanderson Farms resided in the bankruptcy court because of Sanderson Farms' timely motion to correct the May 2005 judgment. Appendix A, p. 6a.

The Martins' supplement provides no basis for granting the writ, and their petition should be denied.

CONCLUSION

The Martins' attempts to recover ownership of settled claims through new theories of unconstitutionality are unsupportable in fact and law. The Martins no longer own the claims and, therefore, have no basis for complaining about their adjudication. Their effort to analogize this Court's ruling in *Marathon* to their arbitration decision fails from the start for multiple reasons set forth above. And their attempt to challenge the constitutionality of the bankruptcy court's jurisdiction to approve compromises is belated and, in any event, unfounded.

No basis exists for granting the petition for writ of certiorari. No issues in this case are in conflict among the courts of appeal, and no important questions of federal law were decided below.

The petition should be denied.

Respectfully submitted,

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